

**IN THE CIRCUIT COURT OF PLEASANTS COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION**

**BB LAND, LLC, a West Virginia company,
and JB EXPLORATION 1, LLC,**

Plaintiffs,

vs.

**Civil Action No. 18-C-2
(Pleasants County)
Presiding: Judge Joanna I. Tabit
Resolution: Judge H. Charles Carl**

**BLACKROCK ENTERPRISES, LLC, a
West Virginia company, and MICHAEL L.
BENEDUM,**

Defendants.

And

BLACKROCK ENTERPRISES, LLC,

Defendant/Third-Party Plaintiff,

vs.

**JAY-BEE PRODUCTION COMPANY, a
West Virginia corporation, JAY-BEE OIL &
GAS, INC., A West Virginia corporation,
RANDY BRODA, and DEBBIE V. BRODA
MORGAN,**

Third-Party Defendants.

**ORDER GRANTING MOTION FOR LEAVE TO FILE
AMENDED ANSWER, COUNTERCLAIM, AND THIRD-PARTY COMPLAINT**

This matter came before the Court, the Honorable Joanna I. Tabit presiding, on the Motion for Leave to File Amended Answer, Counterclaim and Third-Party Complaint ("Motion") filed by Defendant/Third-Party Plaintiff Blackrock Enterprises, LLC ("Blackrock"). The Court considered the Motion, memorandum of law, response, reply, arguments of counsel, and all pertinent legal authorities. Having considered the issues presented, the Court hereby

GRANTS Blackrock's Motion, and makes the following findings of fact and conclusions of law, which govern the Motion at issue:

FINDINGS OF FACT

A. Factual Background

1. Plaintiffs BB Land, LLC and JB Exploration 1, LLC filed the Complaint in this matter on or about January 11, 2018.

2. On or about February 15, 2018, Blackrock filed its Answer, Counterclaim, and Third-Party Complaint in this matter.

3. On or about March 30, 2018, Plaintiffs filed their Motion to Refer to the Business Court Division and the West Virginia Supreme Court of Appeals entered its Administrative Order Granting Motion to Refer to Business Court Division on or about April 27, 2018.

4. On or about May 9, 2018, the Honorable Joanna I. Tabit was assigned as presiding judge in the above-captioned case and the Honorable H. Charles Carl was assigned as resolution judge.

5. A telephonic scheduling conference was thereafter held in the above-captioned matter on June 13, 2018.

6. At the telephonic scheduling conference, the parties were put on notice that Defendants Blackrock and Michael L. Benedum ("Defendants") may amend pleadings, add additional parties, and file cross-claims or counterclaims when Defendants' counsel requested a deadline from the Court to be set and included in the scheduling order.

7. This Court originally entered an Amended Scheduling Order, but due to a clerical error, the Court reentered the Order on July 12, 2018.

8. The Amended Scheduling Order was not filed with the Court until July 16, 2018 and Defendants did not receive the Amended Scheduling Order from the Court until July 18, 2018. By that time, certain deadlines had already expired. Specifically, the deadline related to motions to join additional parties, motions to amend pleadings, and any cross-claims or counterclaims were to filed and noticed for hearing by July 18, 2018, the same day Defendants first received the Order.

9. Moreover, on July 20, 2018, Defendants received the Court's Rule 22 Order, which was entered on July 13, 2018 but not filed with the Court until July 18, 2018. The Rule 22 Order noted the clerical error and modified the Amended Scheduling Order as to briefing deadlines on the four (4) outstanding motions to dismiss and (1) motion to quash, as well as the Plaintiffs' motion to compel, on grounds that the briefing schedule for said motions had already expired.

10. Because the Rule 22 Order omitted a modification to the July 18, 2018 deadline related to the Amended Scheduling Order's deadline for motions to join additional parties, motions to amend pleadings, and any cross-claims or counterclaims, Defendants filed their Objection to Amended Scheduling Order and Motion to Modify Scheduling Order on July 30, 2018.

11. On July 31, 2018, the parties received an email from Lynne E. Coppala, Esquire, Law Clerk to the Honorable Joanna I. Tabit, Circuit Judge of Kanawha County, West Virginia, directing counsel to "confer and submit an agreed amended scheduling order in this case."

12. On August 3, 2018, the parties in this action filed their Joint Stipulation, whereby they jointly agreed to amend the Amended Scheduling Order entered by the Court regarding Paragraph 11, "Joinders, Amendments, Third Party Pleadings, and Other Matters," in order to

permit the parties to file motions to join additional parties, motions to amend pleadings, and any cross-claims or counterclaims, as well as any similar motions thereto, by August 15, 2018.

13. In light of the parties' agreed modification of the Amended Scheduling Order with respect the Paragraph 11, the parties further stipulated and agreed that the briefing deadlines set forth in the Court's July 18, 2018 Rule 22 Order, for responses, proposed orders, and replies to the Partial Motion to Dismiss of Plaintiffs BB Land, LLC and JB Exploration 1, LLC and Motion to Dismiss Third-Party Defendants Jay-Bee Production Company and Jay-Bee Oil & Gas, Inc. were held in abeyance pending resolution of any motions to amend pleadings, join additional parties, and any cross-claims or counterclaims.

14. Blackrock timely filed its Motion on August 15, 2018.

15. At this time, only one round of discovery requests by the Plaintiffs has been filed and responded to by Defendants, and no depositions have yet occurred. Discovery in this case is currently scheduled to be completed on April 24, 2019.

16. Trial is currently scheduled for July 22, 2019.

B. Proposed Amendments

17. In its Motion, Blackrock moved the Court to allow it to file its proposed Amended Answer, Counterclaim and Third-Party Complaint, a copy of which was attached to the Motion as Exhibit 1.

18. Specifically, Blackrock sought leave to amend to add a jury demand to its Answer and to remove Third-Party Defendant Debbie V. Broda Morgan, as an individual, from the claims related to Blackrock's counterclaim and/or third-party complaint.

19. In addition, Blackrock sought leave to amend its counterclaim and third-party complaint to remove the following causes of action: (i) Count 5 for Failure to Offer Interests in

Tracts to Blackrock; (ii) Count 6 for Breach of Duty of Good Faith and Fair Dealing; (iii) Count 7 for Breach of Duty of Good Faith and Fair Dealing; (iv) Count 8 for Breach of Duty of Good Faith and Fair Dealing; (v) Count 9 for Anticipatory Breach of Contract; (vi) Count 10 for Breach of Duty of Good Faith and Fair Dealing; (vii) Count 12 for Tortious Interference with Contracts and Prospective Economic Relations; (viii) Count 13 for Tortious Interference with Contracts and Prospective Economic Relations; (ix) Count 14 for Trade Libel and Commercial Disparagement; (x) Count 15 for Accounting; and (xi) (second) Count 16 for Declaratory Judgment.

20. Blackrock further sought leave to amend its counterclaim and third-party complaint to include the modified and/or additional causes of action contained in the Motion's Exhibit 1. The proposed modified and/or additional claims in the proposed counterclaim and third-party complaint arise from the identical and/or substantially similar facts, allegations, and circumstances that form the basis of the original claims against the Plaintiffs and Third-Party Defendants in the original counterclaim and third-party complaint in this matter.

CONCLUSIONS OF LAW

21. Unless the opposing party can show prejudice, bad faith, or undue delay, a court should grant leave to file an amended pleading. *Forman v. Davis*, 371 U.S. 178, 182 (1962); *see also* W. Va. R. Civ. P. 15(a) (providing that a party may amend its pleading with leave of the court, which "shall be freely given when justice so requires.").

22. The West Virginia Supreme Court, addressing motions pursuant to Rule 15(a), has explained that:

The purpose of the words 'and leave (to amend) shall be freely given when justice so requires' in Rule 15(a) W. Va. R. Civ. P., is to secure an adjudication on the merits of the controversy as would

be secured under identical factual situations in the absence of procedural impediments; therefore, motions to amend should always be granted under Rule 15 when: (1) the amendment permits the presentation of the merits of the action; (2) the adverse party is not prejudiced by the sudden assertion of the subject of the amendment; and (3) the adverse party can be given ample opportunity to meet the issue.

Syl. Pt. 3, *Rosier v. Garron, Inc.*, 156 W. Va. 861, 199 S.E.2d 50 (1973) (emphasis added); *Hawkins v. Ford Motor Co.*, 211 W. Va. 487, 566 S.E.2d 624 (2002) (applying standard).

23. In this instance, the proposed counterclaim and third-party complaint is intended "to secure an adjudication on the merits," in the context of a single civil action, rather than instituting a separate action against the opposing parties individually. Presenting all of Blackrock's claims, presently known, in a single action against Plaintiffs and Third-Party Defendants will thus conserve judicial resources, promote fairness, and prevent the inefficiency and cost of consolidating multiple separately-filed actions.

24. Moreover, all of the facts alleged in the proposed counterclaim and third-party complaint stem from transactions and occurrences arising out of the contract entered into by the parties.

25. As the owner and/or managing member of the Jay-Bee Companies and party to the original counterclaim and third-party complaint, Randy Broda received actual notice of the existence of the ensuing litigation and claims against him with Blackrock's original counterclaim and third-party complaint.

26. In addition, the proposed additional claims against Plaintiffs and Third-Party Defendants in the proposed counterclaim and third-party complaint arise from the identical and/or substantially similar facts and circumstances that form the basis of the original claims against the Plaintiffs and Third-Party Defendants alleged in the original counterclaim and third-

party complaint in this matter. *See Brooks v. Isinghood*, 213 W.Va. 675, 684 584 S.E.2d 531 (2003) (“Rule 15, by its own terms, is to be construed liberally in order to promote the consideration of claims on their merits.”).

27. Furthermore, Blackrock’s counsel put the Plaintiffs and Third-Party Defendants on notice that Defendants may amend pleadings, add additional parties, or file cross-claims or counterclaims when Blackrock’s counsel requested a deadline from the Court on June 13, 2018 to be set and included in the scheduling order.

28. Accordingly, the Court finds that no prejudice will result to any of the Plaintiffs and Third-Party Defendants as a result of the amendment. *See State ex rel. Bd. of Ed. Of Ohio County v. Spillers*, 164 W.Va. 453, 455 259 S.E.2d 417 (1979) (“Prejudice to the adverse party is the paramount consideration in motions to amend.”).

29. The Court also finds that Blackrock timely filed its Motion as a result of (i) the circumstances surrounding the entry of the Amended Scheduling Order and Rule 22 Order, (ii) the Court’s request that counsel confer to submit an amended scheduling order, and (iii) the parties’ stipulation that the deadline for motions to amend pleadings would be extended to August 15, 2018.

30. In light of the foregoing, the Plaintiffs and Third-Party Defendants should have been aware of the possibility that Blackrock would assert related claims against them.

31. Even if new subject matter were presented, Blackrock has been neither neglectful nor dilatory in this matter as the Plaintiffs and Third-Party Defendants have ample opportunity to meet the issues. An amended scheduling order by conference of the parties has not yet been entered beyond the parties’ joint stipulation, little discovery has been conducted thus far, and the

proposed amendment will not cause any delay in this matter considering the current date of trial is scheduled for July 22, 2019.

32. Accordingly, no prejudice would result to the Plaintiffs and Third-Party Defendants should the requested leave to amend be granted. All parties will be given ample opportunity to be heard on the claims asserted in the proposed counterclaim and third-party complaint.

33. For the foregoing reasons, the Court **GRANTS** Blackrock Motion for leave to file its proposed amended answer, counterclaim and third-party complaint because the three requirements for which leave to amend will "always be granted under Rule 15" have been fully met.

RULING

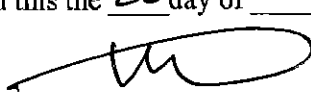
WHEREFORE, for the reasons discussed herein, the Court **GRANTS** Blackrock Enterprises, LLC's Motion for Leave to File Amended Answer, Counterclaim and Third-Party Complaint and **DIRECTS** the Clerk to file Blackrock Enterprises, LLC's Amended Answer, Counterclaim and Third-Party Complaint (attached hereto as Exhibit 1).

Any and all objections are noted and preserved in the record.

It is **SO ORDERED**.

The Clerk is **DIRECTED** to enter the foregoing and to forward attested copies of this Order to all counsel of record.

Entered this the 20 day of December, 2018.

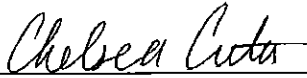


HONORABLE Michael D. Lorensen
Circuit Court Judge

Prepared by:

BLACKROCK ENTERPRISES, LLC

By counsel



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**JAY-BEE PRODUCTION COMPANY, a
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GAS, INC., A West Virginia corporation,
RANDY BRODA, and DEBBIE V. BRODA
MORGAN,**

Third-Party Defendants.

JOINT STIPULATION

Plaintiffs, BB Land, LLC, JB Exploration 1, LLC, and Third-Party Defendants, Jay-Bee Production Company, Jay-Bee Oil & Gas, Inc., Randy Broda and Debbie V. Broda Morgan, by counsel, Ronda L. Harvey, George A. Patterson, Evan G. Conard and Bowles Rice LLP, and Defendants, Blackrock Enterprises, LLC and Michael L. Benedum and Third-Party Plaintiff, Blackrock Enterprises, LLC, by counsel, Brian R. Swiger, Vivian H. Basdekis, Chelsea A. Creta,

D. Luke Thomas and Jackson Kelly PLLC, jointly respond to the July 31, 2018 e-mail from Lynne E. Coppala, Esquire, Law Clerk to the Honorable Joanna I. Tabit, Circuit Judge of Kanawha County, West Virginia, directing counsel to "confer and submit an agreed amended scheduling order in this case", that the parties have entered into this Stipulation the terms of which are as follows:

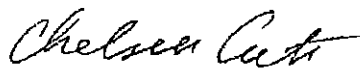
1. The parties do hereby agree to amend the Amended Scheduling Order entered by the Court on July 16, 2018 regarding Paragraph 11, "Joinders, Amendments, Third Party Pleadings, and Other Matters." Particularly, the parties stipulate that the deadline to file motions to join additional parties, motions to amend pleadings, and any cross-claims or counterclaims, as well as any similar motions thereto, shall be August 15, 2018;
2. In light of the parties agreed modification of the Amended Scheduling Order with respect to Paragraph 11, the parties further stipulate and agree that the current briefing deadlines set forth in the Court's July 18, 2018 Rule 22 Order, for responses, proposed orders, and replies to the *Partial Motion to Dismiss of Plaintiffs BB Land, LLC and JB Exploration 1, LLC and Motion to Dismiss Third-Party Defendants Jay-Bee Production Company and Jay-Bee Oil & Gas, Inc.* are hereby held in abeyance pending resolution of any motions to amend pleadings as set forth above; and
3. In accordance with these stipulations, the parties will meet and submit to this Court a proposed Second Amended Scheduling Order.

Entered into this the 20 day of ^{DECEMBER} August, 2018.



Honorable Michael D. Lorensen
Circuit Court Judge

PREPARED BY:



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Michael E. Benedum*

REVIEWED, APPROVED AND
AGREED TO BY:

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Randy Broda and Debbie V. Broda Morgan*

* * * Communication Result Report (Dec. 20. 2018 2:01PM) * * *

1) Judge Lorensen
2)

Date/Time: Dec. 20. 2018 1:59PM

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E. 4) No facsimile connection
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STATE OF WEST VIRGINIA
TWENTY-THIRD JUDICIAL CIRCUIT
BERKELEY, JEFFERSON AND MORGAN COUNTIES
380 W. SOUTH STREET
ROOM 4402
MARTINSBURG, WV 25401

Michael D. Lorensen, Judge

TELEPHONE (304) 267-1340
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FAX COVER SHEET

To: Ms. Millie Farnsworth
Pleasants County Circuit Clerk

From: Deborah Grissinger, Judicial Assistant

Date: December 20, 2018

Re: 18-C-2 BB Land, LLC v. Blackrock Enterprises, LLC, et al.

No. of Pages including cover sheet: 13

Transmitted herewith are the following signed orders for filing:

1. Order Granting Motion for Leave to File Amended Answer, Counterclaim, and Third-Party Complaint
2. Joint Stipulation

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TWENTY-THIRD JUDICIAL CIRCUIT
BERKELEY, JEFFERSON AND MORGAN COUNTIES
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MARTINSBURG, WV 25401

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TELEPHONE (304) 267-1340
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